

# Sumter City-County Board of Appeals

October 13, 2010

## BOA-10-31, 220 South Pike East (City)

### I. THE REQUEST

**Applicant:** Mike Dellinger

**Status of the Applicant:** Business Owner

**Request:** A variance from the strict application of Article 8, Section 8.J.3 of the Sumter City Zoning Ordinance, Design Requirements in order to use alternate parking surface material and no concrete curbing.

**Location:** 220 South Pike East

**Present Use/Zoning:** Vacant former market and nursery/Limited Commercial, Highway Corridor Protection District (LC/HCPD)

**Tax Map Reference:** 248-08-01-005

### II. BACKGROUND

The applicant, Mike Dellinger, is requesting a variance from the requirement to install paved parking with concrete curb and gutter on a +/- 1.1 acre commercial property located on South Pike East, formerly known as Garden Grove Nursery and Market. The photograph *below* shows a current view of the parking area and structure.



Site development at 220 South Pike East predates the current Zoning Ordinance. Due to the age of construction, the site is non-conforming with respect to paving material, landscaping and bufferyards, site access, and building setbacks. The applicant fully intends to meet all landscaping requirements and furnish the required number of parking spaces for this use.



The building is +/-1165 sq. ft. and was previously used as a market and nursery, so the proposed use and occupancy of the parcel is similar to the previous use. There is an existing greenhouse on the parcel that the applicant also intends to use.

The last active business license was for the Garden Grove Nursery and Market in 2005. The parcel has remained vacant since that time.



***Above left***, an aerial view of the parcel from 2007. ***Above right***, the estimated location of wetlands on the site. The above diagram represents an estimate of the location of wetlands on this parcel, based on the national wetlands inventory.

Because the site has been vacant for more than six months, in order to open a new business the parking area must be retrofitted to comply with Section 8.j.3 of the City Zoning Ordinance.

Section 8.j.3 states:

**8.j.3. Design Requirements:**

- a. **Surfacing, Drainage and Maintenance:** *Off-street parking facilities shall be properly graded for drainage to prevent damage to abutting property and/or public streets and alleys. **Parking lots shall be surfaced with asphalt, concrete, or other surfaces** approved by the Sumter City-County Planning commission. **Off street parking lots shall include concrete curbs and gutters**, maintained in a clean, orderly and dust-free condition, and not used for the sale, repair or the dismantling or servicing of any vehicles, equipment, materials or supplies.*

The parcel in question is located partially in mapped wetlands, therefore it is necessary to retain as much permeability on the site as possible. The 2030 Comprehensive Plan states that “wetlands, vegetated areas where plants are rooted in water or water-saturated soil, serve many functions including but not limited to environment-pollutant removal, flood attenuation, groundwater recharge and discharge, stream bank protection, wildlife habitats, open space preservation, recreation and aesthetics. They have the potential to collect, store and filter stormwater and tolerate flooding for extensive periods of time”.

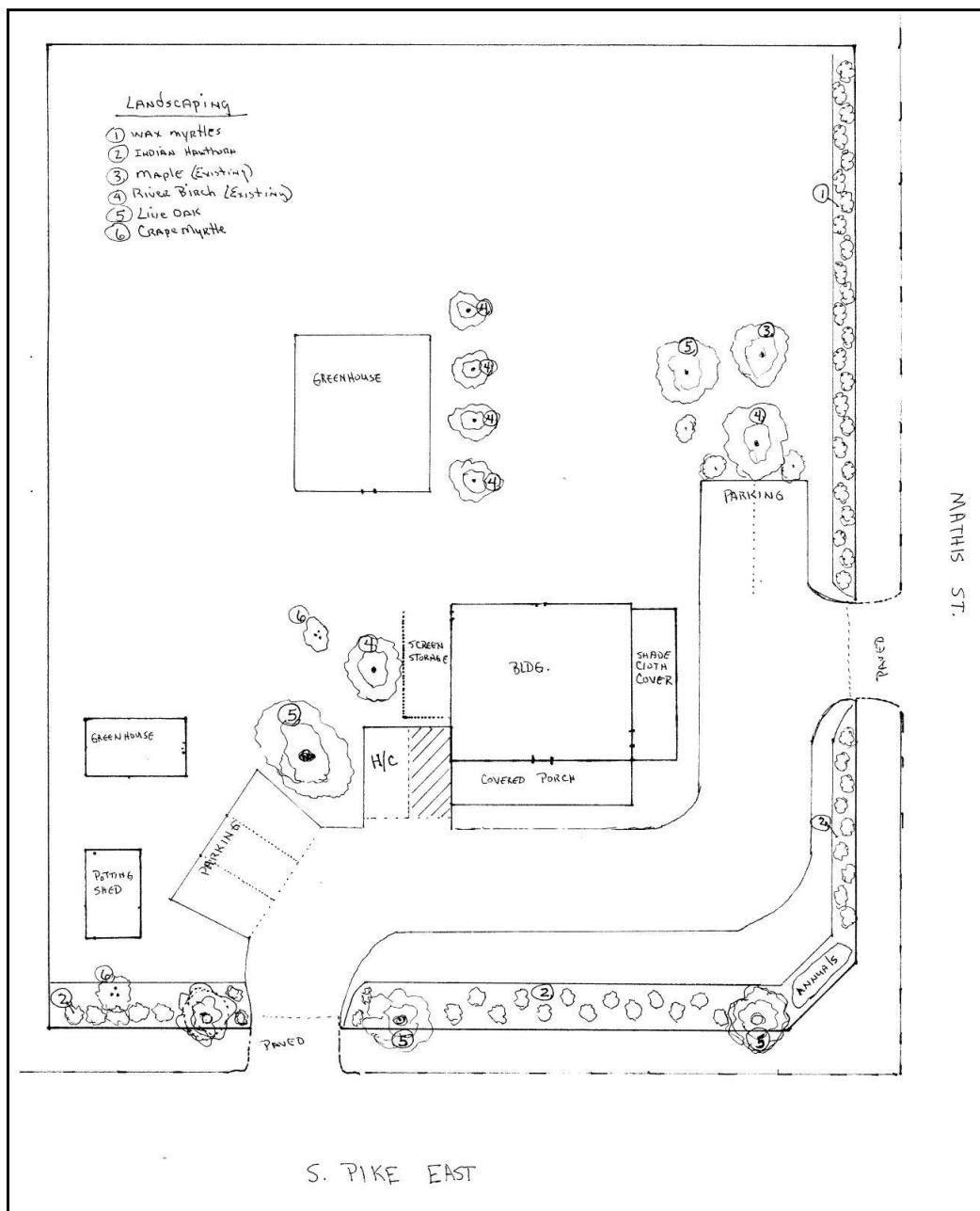
The parking area at this time consists of gravel. It is recommended that the gravel surface remain in place to allow as much drainage of stormwater as possible, so as not to further impact the adjacent wetlands. Installing concrete curb and gutter a parking area is done to control sheet flow of storm water runoff and direct it to retention areas. The purpose of eliminating the curbing and guttering from this parking area is to further reduce the concentration of storm water at specific points around the perimeter of the site. Both of these variances are requested in order to specifically preserve the green infrastructure of the site, as this is a specific goal of the Sumter 2030 Comprehensive Plan.

As per Section 8.j.3 and Exhibit 23, the property must be retrofitted to provide 5 parking spaces including 1 **paved** handicapped van-accessible space are required. The following site issues are also to be addressed:

- 10 foot-wide bufferyard located out of the public ROW along Pike Road
- 5 foot-wide bufferyard along the Mathis St. frontage
- Parking lot trees
- Service area for garbage collection and utilities shall be screened and/or fenced to the equivalent of a five-foot bufferyard or privacy fence or some combination of the two.
- Plantings shall be watered regularly by an automatic and timed irrigation system or other acceptable methods of periodic watering.
- Plant materials shall be sufficiently large and planted in such a fashion that a year-round screen at least six (6) feet in height shall be produced within three (3) growing seasons. All plantings shall be installed according to acceptable horticultural standards.
- Deciduous street trees must have straight trunks and be of two-inch (2”) caliper at time of planting. They must be placed at intervals of forty (40) feet or else shall have smaller understory trees planted in between.

- A landscape plan has been submitted to the Sumter City-County Planning Department because of the property's location within the Highway Corridor Protection District (HCPD).

(Below) The landscaping plan submitted on October 4, 2010 by the applicant indicates parking, and location of proposed trees and shrubs including Wax Myrtles, Indian Hawthorn, Live Oaks and Crape Myrtles. The applicant intends to create a display area on the front corner for annuals and seasonal displays. Both entrances have paved transition drives leading on to the existing gravel parking surface.





### III. THE REQUEST

The applicant is seeking variances from the paved parking requirements as well as a variance from providing concrete curb and gutter because of the presence of wetlands on the parcel.

In order for the Board of Appeals to grant a variance from the Zoning Ordinance, the proposed variance request must meet all four-parts of a State mandated four-part test. When reviewing a variance request, the Board may not grant a variance that would do the following:

- Allow the establishment of a use not otherwise permitted in a zoning district;
- Extend physically a nonconforming use of land;
- Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.

The fact that a property may be utilized more profitably should a variance be granted shall not be considered grounds for approving a variance request.

### IV. FOUR-PART TEST

**1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property.***

There are extraordinary or exceptional conditions pertaining to this particular piece of property based on the following:

The property exists in large part within a mapped wetland area.



**2. *These conditions do not generally apply to other property in the vicinity.***

These conditions *do* not generally apply to other properties in the vicinity based on the following:

- While adjacent parcels do appear to have some wetland conditions, more than half of the parcel in question appears to be in wetlands. This is a much greater proportion of wetland conditions than the surrounding parcels.

**3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.***

Absolute application of the ordinance requirement ***will prohibit*** or unreasonably restrict the utilization of this property due to the following:

- The 2030 Comprehensive Plan outlines as a community concern that wetland areas such as that in the rear of the parcel not be negatively affected by commercial development. If the parking area were to be paved and curbed, this would significantly increase water runoff into the wetland area, thereby potentially causing flood conditions and environmental damage.

**4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.***

- Developing this property with the requested variances *will not be* of substantial detriment to adjacent property or to the public good. The intent of the Section 8.j.2.b of the Zoning Ordinance is to remove or eliminate non-conforming parking and implement landscaping standards at structures and sites that do not currently comply with regulations based on new proposed uses or increases in floor area. Theoretically, sites should be redesigned or retrofitted as directed by the ordinance to meet the current standards of the ordinance, however; there are rare occasions when incremental and reasonable improvements to overwhelmingly non-conforming sites better meets the public good than partial or complete vacancy on a parcel. In addition, environmental factors are present on site (i.e. wetlands) that require an alternative approach to traditional development in order to preserve the community's green infrastructure while ensuring continued utility of previously developed land.

**V. STAFF RECOMMENDATION**

Staff recommends approval of BOA-10-31 and the landscaping plan dated October 4, 2010.

**VI. DRAFT MOTIONS for BOA-10-31**

- A.** I move that the Sumter Board of Appeals approve BOA-10-31 subject to the findings of fact and conclusions contained in the draft order dated October 13, 2010, and the landscaping plan titled, "Landscape Upfit, The Country Market, 220 S. Pike East." dated October 4, 2010, attached as Exhibit 1.
- B.** I move that the Sumter Board of Appeals deny BOA-10-31 on the following findings of fact and conclusions:

**VII. ZONING BOARD OF APPEALS – OCTOBER 13, 2010**

The Sumter City-County Board of Appeals at its meeting on Wednesday, October 13, 2010, voted to approve this request, based on staff recommendation, and subject to the findings of fact and conclusions on exhibit 1.

**Exhibit 1**  
**Order on Variance Application**  
**Sumter Board of Appeals**

**BOA-10-31, 220 South Pike East (City)**  
**October 13, 2010**

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Date Filed: October 13, 2010

Permit Case No. BOA-10-31

The Board of Zoning Appeals held a public hearing on Wednesday, October 13, 2010 to consider the request of Mike Dellinger, 1191 Peach Orchard Rd, Sumter SC 29154 for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant ☒ **has** - ☐ **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

The property exists in large part within a wetland area. Paving and curbing the parking area would greatly increase the risk of environmental damage to the wetlands.

2. The Board concludes that these conditions ☐ **do** - ☒ **do not** generally apply to other property in the vicinity based on the following findings of fact:

Other properties in the vicinity do have some wetland areas on them; however, this parcel is more than halfway covered with potential wetland conditions.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☒ **would** - ☐ **would not** effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

This parcel has been vacant for several years. The new tenant would not be able to establish his business without applying the necessary parking and curbing requirements per the ordinance. Granting this variance will allow him to develop the site in a more environmentally sensitive manner.

4. The Board concludes that authorization of the variance ☐ **will** - ☒ **will not** be of substantial detriment to adjacent property or to the public good, and the character of the district ☐ **will** - ☒ **will not** be harmed by the granting of the variance based on the following findings of fact:

Developing this property with the variances *will not be* of substantial detriment to adjacent property or to the public good. The intent of the Section 8.j.2.b of the Zoning



Ordinance is to remove or eliminate non-nonconforming parking and implement landscaping standards at structures and sites that do not currently comply with regulations based on new proposed uses or increases in floor area.

Theoretically, sites should be redesigned or retrofitted as directed by the ordinance to meet the current standards of the ordinance, however; there are occasions when existing environmental site conditions merit the use of alternate materials that further the community's stated goal of protecting existing green infrastructure.

THE BOARD, THEREFORE, ORDERS that the variance is ☐ DENIED –☒ GRANTED, subject to the following conditions:

Approved by the Board by majority vote.

Date issued: \_\_\_\_\_

\_\_\_\_\_  
Chairman

Date mailed to parties in interest: \_\_\_\_\_

\_\_\_\_\_  
Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.**